

**25-5-1. Estate or interest in real property.**

No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

No Change Since 1953

**25-5-2. Wills and implied trusts excepted.**

Section 25-5-1 may not be construed to affect the power of a testator in the disposition of the testator's real estate by last will and testament; nor to prevent any trust from arising or being extinguished by implication or operation of law.

Amended by Chapter 297, 2011 General Session

**25-5-3. Leases and contracts for interest in lands.**

Every contract for the leasing for a longer period than one year, or for the sale, of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, is in writing subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing.

No Change Since 1953

**25-5-4. Certain agreements void unless written and signed.**

(1) The following agreements are void unless the agreement, or some note or memorandum of the agreement, is in writing, signed by the party to be charged with the agreement:

(a) every agreement that by its terms is not to be performed within one year from the making of the agreement;

(b) every promise to answer for the debt, default, or miscarriage of another;

(c) every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry;

(d) every special promise made by an executor or administrator to answer in damages for the liabilities, or to pay the debts, of the testator or intestate out of his own estate;

(e) every agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation; and

(f) every credit agreement.

(2) (a) As used in Subsection (1)(f) and this Subsection (2):

(i) (A) "Credit agreement" means an agreement by a financial institution to:

(I) lend, delay, or otherwise modify an obligation to repay money, goods, or things in action;

(II) otherwise extend credit; or

(III) make any other financial accommodation.

(B) "Credit agreement" does not include the usual and customary agreements related to deposit accounts or overdrafts or other terms associated with deposit accounts or overdrafts.

(ii) "Creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor.

(iii) "Debtor" means a person who seeks or obtains credit, or seeks or receives a financial accommodation, under a credit agreement with a financial institution.

(iv) "Financial institution" means:

(A) a state or federally chartered:

(I) bank;

(II) savings and loan association;

(III) savings bank;

(IV) industrial bank; or

(V) credit union; or

(B) any other institution under the jurisdiction of the commissioner of Financial Institutions as provided in Title 7, Financial Institutions Act.

(b) (i) Except as provided in Subsection (2)(e), a debtor or a creditor may not maintain an action on a credit agreement unless the agreement:

(A) is in writing;

(B) expresses consideration;

(C) sets forth the relevant terms and conditions; and

(D) is signed by the party against whom enforcement of the agreement would be sought.

(ii) For purposes of this act, a signed application constitutes a signed agreement, if the creditor does not customarily obtain an additional signed agreement from the debtor when granting the application.

(c) The following actions do not give rise to a claim that a credit agreement is created, unless the agreement satisfies the requirements of Subsection (2)(b):

(i) the rendering of financial advice by a creditor to a debtor;

(ii) the consultation by a creditor with a debtor; or

(iii) the creation for any purpose between a creditor and a debtor of fiduciary or other business relationships.

(d) Each credit agreement shall contain a clearly stated typewritten or printed provision giving notice to the debtor that the written agreement is a final expression of the agreement between the creditor and debtor and the written agreement may not be contradicted by evidence of any alleged oral agreement. The provision does not have to be on the promissory note or other evidence of indebtedness that is tied to the credit agreement.

(e) A credit agreement is binding and enforceable without any signature by the party to be charged if:

(i) the debtor is provided with a written copy of the terms of the agreement;

(ii) the agreement provides that any use of the credit offered shall constitute acceptance of those terms; and

(iii) after the debtor receives the agreement, the debtor, or a person authorized by the debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.

Amended by Chapter 92, 2004 General Session

**25-5-5. Representation as to credit of third person.**

To charge a person upon a representation as to the credit of a third person, such representation, or some memorandum thereof, must be in writing subscribed by the party to be charged therewith.

No Change Since 1953

**25-5-6. Promise to answer for obligation of another -- When not required to be in writing.**

A promise to answer for the obligation of another in any of the following cases is deemed an original obligation of the promisor and need not be in writing:

(1) Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise, or by one who has received a discharge from an obligation in whole or in part in consideration of such promise.

(2) Where the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made in terms or under circumstances such as to render the party making the promise the principal debtor and the person in whose behalf it is made his surety.

(3) Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancel the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person.

(4) Where a factor undertakes for a commission to sell merchandise and to guarantee the sale.

(5) When the holder of an instrument for the payment of money upon which a third person is or may become liable to him transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

No Change Since 1953

**25-5-7. Contracts by telegraph deemed written.**

Contracts made by telegraph shall be deemed to be contracts in writing, and all communications sent by telegraph and signed by the person sending the same, or by his authority, shall be deemed to be communications in writing.

No Change Since 1953

**25-5-8. Right to specific performance not affected.**

Nothing in this chapter contained shall be construed to abridge the powers of

courts to compel the specific performance of agreements in case of part performance thereof.

No Change Since 1953

**25-5-9. Agent may sign for principal.**

Every instrument required by the provisions of this chapter to be subscribed by any party may be subscribed by the lawful agent of such party.

No Change Since 1953

**25-6-1. Short title.**

This chapter is known as the "Uniform Fraudulent Transfer Act."

Enacted by Chapter 59, 1988 General Session

**25-6-2. Definitions.**

In this chapter:

(1) "Affiliate" means:

(a) a person who directly or indirectly owns, controls, or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities;  
or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(c) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or  
(d) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but does not include:

(a) property to the extent it is encumbered by a valid lien;

(b) property to the extent it is generally exempt under nonbankruptcy law; or

(c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

- (6) "Debtor" means a person who is liable on a claim.
- (7) "Insider" includes:
- (a) if the debtor is an individual:
    - (i) a relative of the debtor or of a general partner of the debtor;
    - (ii) a partnership in which the debtor is a general partner;
    - (iii) a general partner in a partnership described in Subsection (7)(a)(ii);
    - (iv) a corporation of which the debtor is a director, officer, or person in control; or
    - (v) a limited liability company of which the debtor is a member or manager;
  - (b) if the debtor is a corporation:
    - (i) a director of the debtor;
    - (ii) an officer of the debtor;
    - (iii) a person in control of the debtor;
    - (iv) a partnership in which the debtor is a general partner;
    - (v) a general partner in a partnership described in Subsection (7)(b)(iv);
    - (vi) a limited liability company of which the debtor is a member or manager; or
    - (vii) a relative of a general partner, director, officer, or person in control of the debtor;
  - (c) if the debtor is a partnership:
    - (i) a general partner in the debtor;
    - (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;
    - (iii) another partnership in which the debtor is a general partner;
    - (iv) a general partner in a partnership described in Subsection (7)(c)(iii);
    - (v) a limited liability company of which the debtor is a member or manager; or
    - (vi) a person in control of the debtor;
  - (d) if the debtor is a limited liability company:
    - (i) a member or manager of the debtor;
    - (ii) another limited liability company in which the debtor is a member or manager;
    - (iii) a partnership in which the debtor is a general partner;
    - (iv) a general partner in a partnership described in Subsection (7)(d)(iii);
    - (v) a person in control of the debtor; or
    - (vi) a relative of a general partner, member, manager, or person in control of the debtor;
  - (e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
  - (f) a managing agent of the debtor.
- (8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.
- (9) "Person" means an individual, partnership, limited liability company, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.
- (10) "Property" means anything that may be the subject of ownership.
- (11) "Relative" means an individual or an individual related to a spouse, related by consanguinity within the third degree as determined by the common law, or a

spouse, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, or voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Amended by Chapter 168, 1992 General Session

### **25-6-3. Insolvency.**

(1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(2) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

(3) A partnership is insolvent under Subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(4) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(5) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Enacted by Chapter 59, 1988 General Session

### **25-6-4. Value -- Transfer.**

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. However, value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) Under Subsection 25-6-5(1)(b) and Section 25-6-6, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Enacted by Chapter 59, 1988 General Session

### **25-6-5. Fraudulent transfer -- Claim arising before or after transfer.**

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a

creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (b) without receiving a reasonably equivalent value in exchange for the transfer or obligation; and the debtor:

- (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

- (ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) To determine "actual intent" under Subsection (1)(a), consideration may be given, among other factors, to whether:

- (a) the transfer or obligation was to an insider;
- (b) the debtor retained possession or control of the property transferred after the transfer;

- (c) the transfer or obligation was disclosed or concealed;

- (d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

- (e) the transfer was of substantially all the debtor's assets;

- (f) the debtor absconded;

- (g) the debtor removed or concealed assets;

- (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

- (i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

- (j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

- (k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Enacted by Chapter 59, 1988 General Session

**25-6-6. Fraudulent transfer -- Claim arising before transfer.**

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

- (a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

- (b) the debtor was insolvent at the time or became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

Amended by Chapter 61, 1989 General Session

#### **25-6-7. Transfer -- When made.**

In this chapter:

- (1) A transfer is made:
  - (a) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and
  - (b) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien other than under this chapter that is superior to the interest of the transferee.
- (2) If applicable law permits the transfer to be perfected as provided in Subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.
- (3) If applicable law does not permit the transfer to be perfected as provided in Subsection (1), the transfer is made when it becomes effective between the debtor and the transferee.
- (4) A transfer is not made until the debtor has acquired rights in the asset transferred.
- (5) An obligation is incurred:
  - (a) if oral, when it becomes effective between the parties; or
  - (b) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

Enacted by Chapter 59, 1988 General Session

#### **25-6-8. Remedies of creditors.**

- (1) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 25-6-9, may obtain:
  - (a) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
  - (b) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by the Utah Rules of Civil Procedure;
  - (c) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
    - (i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
    - (ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
    - (iii) any other relief the circumstances may require.
- (2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset transferred or its proceeds.

Enacted by Chapter 59, 1988 General Session



**25-6-9. Good faith transfer.**

(1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.

(6) A transfer is not voidable under Subsection 25-6-6(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Amended by Chapter 297, 2011 General Session

**25-6-10. Claim for relief -- Time limits.**

A claim for relief or cause of action regarding a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(1) under Subsection 25-6-5(1)(a), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under Subsection 25-6-5(1)(b) or 25-6-6(1), within four years after the

transfer was made or the obligation was incurred; or

(3) under Subsection 25-6-6(2), within one year after the transfer was made or the obligation was incurred.

Enacted by Chapter 59, 1988 General Session

**25-6-11. Legal principles applicable to chapter.**

Unless displaced by this chapter, the principles of law and equity, including merchant law and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement this chapter's provisions.

Enacted by Chapter 59, 1988 General Session

**25-6-12. Construction of chapter.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Enacted by Chapter 59, 1988 General Session

**25-6-13. Applicability of chapter.**

This act applies when any transfer occurs after the effective date of this act.

Enacted by Chapter 59, 1988 General Session

**25-6-14. Asset Protection Trust.**

(1) As used in this section:

(a) "Creditor" means:

(i) a creditor or other claimant of the settlor existing when the trust is created; or  
(ii) a person who subsequently becomes a creditor, including, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured:

(A) one holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority; or

(B) one with a right to payment.

(b) "Property" means real property, personal property, and interests in real or personal property.

(c) "Settlor" means a person who transfers property in trust.

(d) "Transfer" means any form of transfer of property, including gratuitous transfers, whether by deed, conveyance, or assignment.

(e) "Trust" has the same meaning as in Section 75-1-201.

(2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use or occupancy of real property or tangible personal property owned by the trust if the use or occupancy is in accordance with the trustee's discretionary authority under the trust instrument.

(3) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the requirements of Subsection (5) are satisfied, a creditor of the settlor may not:

(a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust;

(b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

(c) require the trustee to pay any distribution directly to the creditor, or otherwise attach the distribution before it has been paid or delivered by the trustee to the settlor, as beneficiary.

(4) Notwithstanding Subsection (3), nothing in this section prohibits a creditor from satisfying a claim or liability from the distribution once it has been paid or delivered by the trustee to the settlor, as beneficiary.

(5) In order for Subsection (3) to apply, the conditions in this Subsection (5) shall be satisfied. Where this Subsection (5) requires that a provision be included in the trust instrument, no particular language need be used in the trust instrument if the meaning of the trust provision otherwise complies with this Subsection (5).

(a) The trust instrument shall provide that the trust is governed by Utah law and is established pursuant to this section.

(b) The trust instrument shall require that at all times at least one trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

(c) The trust instrument shall provide that neither the interest of the settlor, as beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily transferred by the settlor, as beneficiary. The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code.

(d) The settlor may not have the ability under the trust instrument to revoke, amend, or terminate all or any part of the trust, or to withdraw property from the trust, without the consent of a person who has a substantial beneficial interest in the trust, which interest would be adversely affected by the exercise of the power held by the settlor.

(e) The trust instrument may not provide for any mandatory distributions of either income or principal to the settlor, as beneficiary, except as provided in Subsection (7)(f).

(f) The settlor may not benefit from, direct a distribution of, or use trust property except as stated in the trust instrument. An agreement or understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument is void.

(g) The trust instrument shall require that, at least 30 days before making any distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a child support judgment or order against the settlor. The trust instrument shall require that the notice state the date the distribution will be made and the amount of the distribution.

(h) At the time that the settlor transfers any assets to the trust, the settlor may not be in default of making a payment due under any child support judgment or order.

(i) A transfer of assets to the trust may not render the settlor insolvent.

(j) At the time the settlor transfers any assets to the trust, the settlor may not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's expressed intention to protect trust assets from the settlor's potential future creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.

(k) At the time that the settlor transfers any assets to the trust, the settlor may not be contemplating filing for relief under the provisions of the Bankruptcy Code.

(l) Assets transferred to the trust may not be derived from unlawful activities.

(m) At the time the settlor transfers any assets to the trust, the settlor shall sign a sworn affidavit stating that:

(i) the settlor has full right, title, and authority to transfer the assets to the trust;

(ii) the transfer of the assets to the trust will not render the settlor insolvent;

(iii) the settlor does not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust;

(iv) there are no pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the affidavit;

(v) the settlor is not involved in any administrative proceedings, except those administrative proceedings identified on an attachment to the affidavit;

(vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a child support obligation;

(vii) the settlor does not contemplate filing for relief under the provisions of the Bankruptcy Code; and

(viii) the assets being transferred to the trust were not derived from unlawful activities.

(6) Failure to satisfy the requirements of Subsection (5) shall result in the consequences described in this Subsection (6).

(a) If any requirement of Subsections (5)(a) through (g) is not satisfied, none of the property held in the trust will at any time have the benefit of the protections described in Subsection (3).

(b) If the trustee does not send the notice required under Subsection (5)(g), the court may authorize any person with a child support judgment or order against the settlor to whom notice was not sent to attach the distribution or future distributions, but the person may not:

(i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust; or

(ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

(c) If any requirement set forth in Subsections (5)(h) through (m) is not satisfied, the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection (3).

(7) The provisions of Subsection (3) may apply to a trust even if:

(a) the settlor serves as a cotrustee or as an advisor to the trustee, provided that the settlor may not participate in the determination as to whether a discretionary distribution will be made;

(b) the settlor has the authority under the terms of the trust instrument to appoint

nonsubordinate advisors or trust protectors who can remove and appoint trustees and who can direct, consent to, or disapprove distributions;

(c) the settlor has the power under the terms of the trust instrument to serve as an investment director or to appoint an investment director under Section 75-7-906;

(d) the trust instrument gives the settlor the power to veto a distribution from the trust;

(e) the trust instrument gives the settlor a testamentary nongeneral power of appointment or similar power;

(f) the trust instrument gives the settlor the right to receive the following types of distributions:

(i) income, principal, or both in the discretion of a person, including a trustee, other than the settlor;

(ii) principal, subject to an ascertainable standard set forth in the trust;

(iii) income or principal from a charitable remainder annuity trust or charitable remainder unitrust, as defined in 26 U.S.C. 664;

(iv) a percentage of the value of the trust each year as determined under the trust instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. 643(b);

(v) the transferor's potential or actual use of real property held under a qualified personal residence trust, or potential or actual possession of a qualified annuity interest, within the meaning of 26 U.S.C. 2702 and the accompanying regulations; and

(vi) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702; or

(g) the trust instrument authorizes the settlor to use real or personal property owned by the trust.

(8) If a trust instrument contains the provisions described in Subsections (5)(a) through (g), the transfer restrictions prevent a creditor or other person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit fraudulent conveyance, aiding and abetting a fraudulent conveyance, participation in the trust transaction, or similar cause of action or claim for relief. For purposes of this subsection, counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust. The creditor and other person prevented from asserting a cause of action or claim for relief may assert a cause of action against, and are limited to recourse against, only:

(a) the trust and the trust assets; and

(b) the settlor, to the extent otherwise allowed in this section.

(9) A cause of action or claim for relief regarding a fraudulent transfer of a settlor's assets under Subsection (5)(j) is extinguished unless the action under Subsection (5)(j) is brought by a creditor of the settlor who was a creditor of the settlor before the assets referred to in Subsection (5)(j) were transferred to the trust and the action under Subsection (5)(j) is brought within the earlier of:

(a) the later of:

(i) two years after the transfer is made; or

(ii) one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:

(A) can demonstrate, by a preponderance of the evidence, that the creditor asserted a specific claim against the settlor before the transfer; or

(B) files another action, other than an action under Subsection (5)(j), against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this Subsection (9) is filed within two years after the transfer.

(b) (i) with respect to a creditor known to the settlor, 120 days after the date on which notice of the transfer is mailed to the creditor, which notice shall state the name and address of the settlor, the name and address of the trustee, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash, and which shall inform the creditor that he is required to present his claim to both the settlor and the trustee within 120 days from the mailing of the notice or be forever barred; or

(ii) with respect to a creditor not known to the settlor, 120 days after the date on which notice of the transfer is first published in a newspaper of general circulation in the county in which the settlor then resides, which notice shall state the name and address of the settlor, the name and address of the trustee, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash.

(10) The notice required in Subsection (9)(b) shall be published in accordance with the provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are required to present claims within 120 days from the first publication of the notice or be forever barred.

(11) (a) A trust is subject to this section if it is governed by Utah law, as provided in Section 75-7-107, and if it otherwise meets the requirements of this section.

(b) A court of this state has exclusive jurisdiction over an action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.

Repealed and Re-enacted by Chapter 284, 2013 General Session